S.B.CIVIL WRIT PETITION NO.7441/2007
(Manmohan Gehlot Vs. The State of Rajasthan & ors.)

Date of order : 19th November 2007

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. Shyam S. Khatri for the petitioner.

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BY THE COURT:

Heard learned counsel and perused the material placed on record.

By way of this writ petition, the petitioner, working on the post of Physical Teacher seeks to question the order dated 05.10.2007 (Annex.2) whereby he has been transferred from Government Upper Primary School, Ambasar, Bikaner to Government Upper Primary School, Gopliyan, Loonkarsan and the order dated 10.10.2007 (Annex.4) passed by the Rajasthan Civil Services Appellate Tribunal, Jaipur dismissing his appeal (No.2257/2007) against the said transfer order.

The petitioner contends that he has been transferred without any administrative exigency and without application of mind; and that the State Government is not competent to pass such transfer order which could be made only by the Panchayat Samiti concerned on the recommendations of the District Establishment Committee; that wife of the petitioner is working in Government Secondary School, Bithnok, Kolayat and that according to the policy of the Government, the

petitioner and his wife ought to have been retained at the same place; that even representation made by the petitioner (Annexure-3) has not been considered by the authorities; and that the Tribunal has erred in summarily rejecting the appeal without considering the substance of the submissions made on behalf of the petitioner.

The present petition remains bereft of substance and contentions sought to be urged herein deserve to be rejected following detailed order made by this court in a batch of similar petitions led by CWP No. 7341/2007 (Ram Lal Bishnoi Vs. State of Rajasthan & Ors) and in CWP No.7374/2007 Meena Sharma Vs. State of Rajasthan & ors.

Rejecting the similar contentions on competence of the State Government to issue such transfer orders, this court has observed and held on the operation of the relevant provisions of the Rajasthan Panchayati Raj Act 1994 and Rajasthan Panchayati Raj Rules 1996 that,-

> "Sub-section (8-A) of Section 89 has been inserted by way of amendment to the Act of 1994 with a non obstante clause overriding the provisions of Sub-section (8) of Section 89. Thus, the powers of the State Government to transfer any member of service from one Panchayat Samiti to another within or outside the district, from one Zila Parishad to another, from one Panchayat Samiti to Zila Parishad or from one Zila Parishad to Panchayat Samiti have their overriding effect on any other power of transfer with any other authority. Operation of such wide powers finds incorporation in the scheme of the Rules of 1996 too.

> The State Government may also stay the operation of, or cancel, any order of transfer made under Sub-section (8) of Section 89 whereby appointment by transfer is envisaged to be made after consultation with Pradhans or Pramukhs of Panchayat Samitis and Zila Parishads, as the case may be, whereto and wherefrom such transfer is proposed to be made.
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> A look at the Rules aforesaid and the source of wide powers of State Government that is, Sub-section (8-A) of Section 89 of the Act of 1994, makes it clear that it is within the competence of the State Government, inter alia, to transfer an employee like the petitioner from one Panchayat Samiti to another Panchayat Samiti within the same District or outside the District.
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> As noticed, wide powers of the State Government flowing from Sub-section (8-A) of Section 89 have their overriding effect and are not whittled down by any other provision in the Act nor could be read circumscribed by any provision in the Rules. The powers of the State Government being untrammelled and unaffected by any other power with any other authority to issue transfer order, this Court is clearly of opinion that the transfer orders of the present nature as issued by the State Government, transferring the employees from one Panchayat Samiti to another Panchayat Samiti, do not suffer from want of authority nor could be said to have been issued in violation of any statutory condition or requirement."

In view of the decision aforesaid, the contention against competence of the State Government to issue the order of transfer deserves to be and is hereby rejected.

So far the policies of the Government are concerned, the same could only be taken to be those of guidelines and there does not appear any violation of any statutory requirement so as to consider interference in the transfer order. So far the representation is concerned, the

Tribunal has also observed that for personal difficulties representation ought to be made to the authorities. However, in the facts and circumstances of this case where the petitioner seems to have not specifically pressed his case before the Tribunal in relation to the representation, there does not appear any reason to consider any interference in this writ petition.

The petition fails and is, therefore, rejected.

MK **(DINESH MAHESHWARI),J.**